

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

FILE NO.: Violation KA-08-06
REF: OCCL: MC

March 11, 2010

REGARDING: Enforcement File KA-08-06
Unauthorized Landscaping (Trail Building)

LANDOWNER: Secret Beach Properties, LLC
c/o Justin Hughes
Belvedere Tiburon, CA

LOCATION: Kauapea Beach, Namahana, Hanalei, Kaua'i

TMK: (4) 5-2-005:036

PARCEL SIZE: 23.803 acres

SUBZONE: Limited

BACKGROUND

In March 2007 the Office of Conservation and Coastal Lands (OCCL) opened an investigation into the alleged unauthorized cutting of trees and dumping of green waste in the Conservation District. OCCL concluded that a violation had occurred, but was unable to determine if the landowner of the subject parcel had authorized the work or if it had been done by a neighboring rental property owner without the landowner's consent. OCCL decided not to pursue the case, while the landowner agreed to remove the remaining green waste.

In July 2009 OCCL received complaints that the landowner was cutting more trees and building a transverse trail on the subject parcel, TMK (4) 5-2-005:036, above Secret Beach on the North Shore of Kaua'i. Our investigation led us to conclude that the landowner has engaged in unauthorized landscaping in violation of Conservation District Rules.

DESCRIPTION OF AREA

The subject parcel is located on the North Shore of Kaua'i between Kauapea Road and Kauapea Beach. The parcels along the road are in the State Land Use Agriculture District, and the majority have been developed as luxury rentals and vacation homes. An approximately 200' pali descends sharply on the makai side of the properties down to the beach.

Kauapea Beach runs approximately 1600 meters along the bay bounded by Kīlauea Point and Kapuka'amoi Point, immediately east of Kalihiwai Bay. The beach is marketed online as "Secret Beach," and despite strong ocean currents and occasional fatalities it has become popular among visitors seeking an "off the beaten path" experience. There is public access to the beach from Kalihiwai road to the west, although the ten minute hike from the parking area to the beach proper tends to limit crowds.

The pali is in the Limited Subzone of the Conservation District. The subject parcel, TMK (4) 5-2-005:036, runs approximately 1000 meters along the pali and separates the agriculture properties above from the beach below. This is shown in **Exhibit 1**.

RECENT HISTORY

March 2007 to January 2008

OCCL begin receiving complaints in March 2007 of unauthorized tree cutting and green waste dumping fronting 2480 Kauapea Road ("Dali Hale," TMK 5-2-005:029, a.k.a. the Hass parcel). An officer from the Division of Conservation and Resource Enforcement (DOCARE) conducted a site inspection, and concluded that an unknown number of ironwood trees had been cut along the cliff side ("Secret Beach Properties," TMK 5-2-005:036, a.k.a. the Hughes parcel). Debris from the cutting had been dumped over the pali. **Exhibit 2** shows photographs from the officer's report (ref. KA-07-402).

The officer observed a man carrying ropes and wearing a hardhat in the area around some recently cut trees; however, when the officer reached the area the man was gone and the Hass vacation house was vacant.

OCCL opened an investigation, and conducted a site visit on January 28, 2008 with representatives of both Hass and Hughes. The site visit revealed that the cut ironwoods had begun to grow back, but that debris from the cutting remained at the base of the pali abutting the beach. **Exhibit 3** shows OCCL photographs from that visit.

OCCL also noticed a number of trails of unknown age running from the topside Kauapea properties across the Hughes parcel down to the beach. The trails appeared to be rough and minimally maintained.

Haas provided a statement to DOCARE that he had observed that some ironwoods were leaning on one another and that he had contracted an unknown male (who happened to be walking down

the street with a chainsaw) to remove the potentially hazardous trees. Hass stated that he did not know where his property boundary was.

Hughes stated that he did not know that the work was being conducted on his property, and that he did not authorize it.

OCCL concluded that a land use violation had occurred, but was faced with the difficulty that the landowner of the subject parcel was possibly unaware of the work and the contractor who conducted the work could not be named. OCCL decided not to pursue an enforcement at this time, and left the case open pending clean-up of the debris.

At this point OCCL staff reviewed Conservation District rules with representatives of the landowners, calling attention in particular to the following land uses pursuant to Hawai'i Administrative Rules (HAR) §13-5, and their associated permits:

P-12 TREE REMOVAL

(A-1) *Removal of dead or diseased:*

(1) *Non-native trees; or*

(2) *Native trees less than six inches in diameter measured at ground level.*

(A-2) *Removal of trees which pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the tree if it was six inches or greater in diameter when measured at ground level.*

(C-1) *Removal of not more than five trees or more than five trees less than six inches in diameter measured at ground level;*

(D-1) *Removal of more than five trees, six inches or greater in diameter measured at ground level.*

The OCCL site visit was concluded, and the landowners' representatives were provided with a copy of HAR §13-5 for reference.

September 2008 to July 2009

OCCL received complaints that more work was being conducted at Secret Beach Properties, including the removal of additional trees and the construction of a lateral trail. The representative for Secret Beach Properties stated that, in order to reach areas where the deadfall had come to rest, the groundskeepers needed to open trails and install safety fencing for their own protection. The groundskeepers discovered that more property owners had been dumping waste over the edge, and so continued building the trail in order to reach the new areas.

Secret Beach argues that the work was done "only for maintenance, and not for beautification purposes." The complete statement from the property owner is contained in **Exhibit 4**.

OCCL re-opened the investigation. DOCARE officers were asked to conduct further site inspections, and OCCL spoke with members of the community. The investigation revealed that the Hughes or their contractors had begun construction of a modern trail transversing most of the property. Community members state that they had witnessed the Hughes leading prospective buyers along the new trail.

Exhibit 5 shows photographs of the new trail.

OCCL conducted an online search of properties for sale in the area. The Hughes properties are listed as luxury vacation rentals, but we did not find evidence that they were for sale. OCCL does note that listings for neighboring properties do claim trails with private beach access (e.g. The Villa at Lewalani, TMK 5-2-005:035, advertises “coveted beach access on a private manicured trail leading to world renowned Secret Beach;” see **Exhibit 6**).

On July 30, 2009 OCCL sent a Notice of Violation to Secret Beach Properties (**Exhibit 7**) alleging the following:

1. The location of the construction, Tax Map Key: (4) 5-2-05:36, is in the Conservation District and is classified as *Limited* Subzone;
2. In November 2007 the Office of Conservation and Coastal Lands (OCCL) investigated complaints regarding unauthorized tree cutting and green waste dumping on the subject parcel;
3. OCCL concluded that a neighboring property owner had conducted the cutting and dumping; the landowner agreed to clear the green waste off their land; OCCL did not pursue the enforcement action pending the cleanup;
4. In September 2008 the landowner’s representative notified OCCL that they would be “opening up” an existing trail to conduct the maintenance;
5. In July 2009 OCCL requested that officers from the Division of Conservation and Resource Enforcement (DOCARE) conduct a site visit to determine if the maintenance and clean up had been completed;
6. OCCL was then notified that the landowners instead have removed healthy trees, cut and graded a new trail along the pali, and installed steps and fencing along the trail; and this work appears to be ongoing;
7. This work requires a Conservation District Use Permit (CDUP) from either the Chair or the Board of Land and Natural Resources pursuant to Hawai’i Administrative Rules (HAR) §13-5 *Identified Land Uses in the Limited Subzone*, L-4 LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS;
8. This work was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

DISCUSSION

Chapter 13-5, Hawai'i Administrative Rules (HAR) and Chapter 183C, Hawai'i Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs, costs associated with land and/or habitat restoration, and damages to state land for uses that are not allowed or for which no permit has been obtained.

Land use is defined in HAR §13-5-2(2) as

- (1) *The placement or erection of any solid material on land if that material remains on the land more than fourteen days, or which causes a permanent change in the land area on which it occurs;*
- (2) *The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;*
- (3) *The subdivision of land; or*
- (4) *The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.*

The Secret Beach trail meets this definition of land use as it caused a permanent change in the land area, and involved the grading of land.

The closest identified land use to the trail construction would be found under HAR §13-5 L-4 LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS. The landowner has not applied for a Conservation District Use Permit for any land use on the parcel.

Secret Beach Properties has argued that the trail was necessary in order to clean debris off the property, that the trail was extended when additional debris was discovered, and that they were only clearing debris due to OCCL's initial Notice of Violation.

OCCL finds this argument disingenuous. The majority of debris that OCCL noticed on our original site inspection was at the top and the base of the pali, not at its midpoint. OCCL would also point out that the trail pathway has been cut and graded, that PVC drainage pipes have been lain under the trail, and that fencing and trail borders were installed. We take this as evidence that the trail was intended to be a permanent feature of the land, and not a temporary measure designed for the one-time clean-up of debris.

Finally, OCCL does not accept that any reasonable reading of the Conservation District rules could lead a landowner to believe that "cleaning" and "routing maintenance" allows for the grading and construction of a permanent trail without going through the permitting process.

OCCL notes that we are not taking a position pro or con on the reason or justification for the trail. We are stating that such a trail would have required a Conservation District Use Permit, and that no such permit was applied for or secured.

OCCL notes that a neighboring property, TMK (4) 5-2-005:036, was also the subject of an enforcement action regarding unauthorized trail construction. In 1999 the Board fined the landowner the maximum fine allowed under the statute at that time: \$2000 plus \$500 in administrative costs (Enf. KA-99-13). The landowner was also required to submit an after-the fact permit application, along with an environmental assessment, for the trail. The Board approved the permit on April 14, 2000 (CDUP KA-2966).

ALLEGED UNAUTHORIZED LAND USES:

The construction of the trail is in violation of Chapter 183C, Hawai'i Revised Statutes (HRS), and Title 13-5, Hawai'i Administrative Rules (HAR). Based upon our investigation, OCCL finds that:

1. The location of the trail, Tax Map Key: (4) 5-2-05:36, is in the Conservation District and is classified as *Limited Subzone*;
2. The trail involved the clearing and the grading of the land, and the placement of a fence;
3. This work requires a Conservation District Use Permit (CDUP) pursuant to Hawai'i Administrative Rules (HAR) §13-5 *Identified Land Uses in the Limited Subzone*, L-4 LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS;
4. This work was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

CONCLUSION:

Fines:

The stated purpose of the Conservation District law is to protect and conserve natural resources. The section of the law, HRS, Section 183C-7, that refers to enforcement of our conservation laws should have a deterrent effect on the landowner to prevent them from doing or allowing malfeasance within the Conservation District.

Staff has considered the Department's mechanism for the imposition of fines for the unauthorized improvements. Our conservation law, Chapter 183C, Hawai'i Revised Statutes (HRS) allows for the imposition of up to a \$15,000 fine for violating the statute.

OCCL's main concern with this case is the willful nature of the alleged violations, rather than with any significant resource damage. The design and durability of the trail indicates that this was intended to be a permanent addition to the land, and one which would increase its value to prospective investors for the subject and neighboring parcels. The landowner had been notified

had been provided with a copy of Conservation District Rules. OCCL believes that the landowner would have been aware of the need for a permit for land uses in the Conservation District.

OCCL is concerned that a lower fine would establish a potentially dangerous precedence that Conservation District Rules can be violated at will. **OCCL recommends a minimum fine of \$7500 due to the willful nature of the violation.**

Administrative Costs:

Staff notes the landowner should pay for the following divisional resources used: 1) Office of Conservation and Coastal Lands (OCCL); and 2) DOCARE Kaua'i Branch. DOCARE's staff calculated administrative costs total \$500.00, and OCCL's staff calculated administrative costs total \$1,000.00. Staff has calculated the total amount to be **\$1500.00**.

This submittal and notice of the Board's meeting will be sent to Secret Beach Properties, LLC.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 183C, Hawai'i Revised Statutes (HRS), the Board find Secret Beach Properties, LLC, in violation of HRS, Chapter 183C and HAR, Chapter 13-5, and subject to the following:

1. That Secret Beach Properties, LLC violated the provisions of Chapter 183C, Hawai'i Revised Statutes (HRS), and Chapter 13-5, Hawai'i Administrative Rules (HAR), by landscaping in the Limited Subzone without a Conservation District Use Permit.
2. That Secret Beach Properties, LLC is fined a minimum of **\$7500**;
3. That Secret Beach Properties, LLC is fined **\$1,500.00** for administrative costs;
4. That Secret Beach Properties, LLC shall pay all fines within sixty (60) days of the date of the Board's action on this matter;
5. That Secret Beach Properties, LLC shall either remediate the trail and restore the land to its original state, or apply for an after-the-fact Conservation District Use Permit (CDUP) for the trail within sixty (60) days of the Board's action on this matter;
6. That the CDUP for the Trail will need to be approved by the Department, who has the final authority to sign, modify, or deny the permit; and that if the permit is denied the trail will need to be removed and the area restored to its natural state;
7. That no further work shall occur on the subject parcels within the Conservation District, without the Board of Land and Natural Resources approval; Chairman's approval and/or

OCCL approval. If Secret Beach Properties, LLC conducts further work in the Conservation District portions of the parcels without approval, they will be fined an additional \$2,000 a day; and

8. That in the event of failure of Secret Beach Properties, LLC to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



Michael Cain
Office of Conservation and Coastal Lands

Approved for submittal:



LAURA THIELEN, Chairperson
Board of Land and Natural Resources

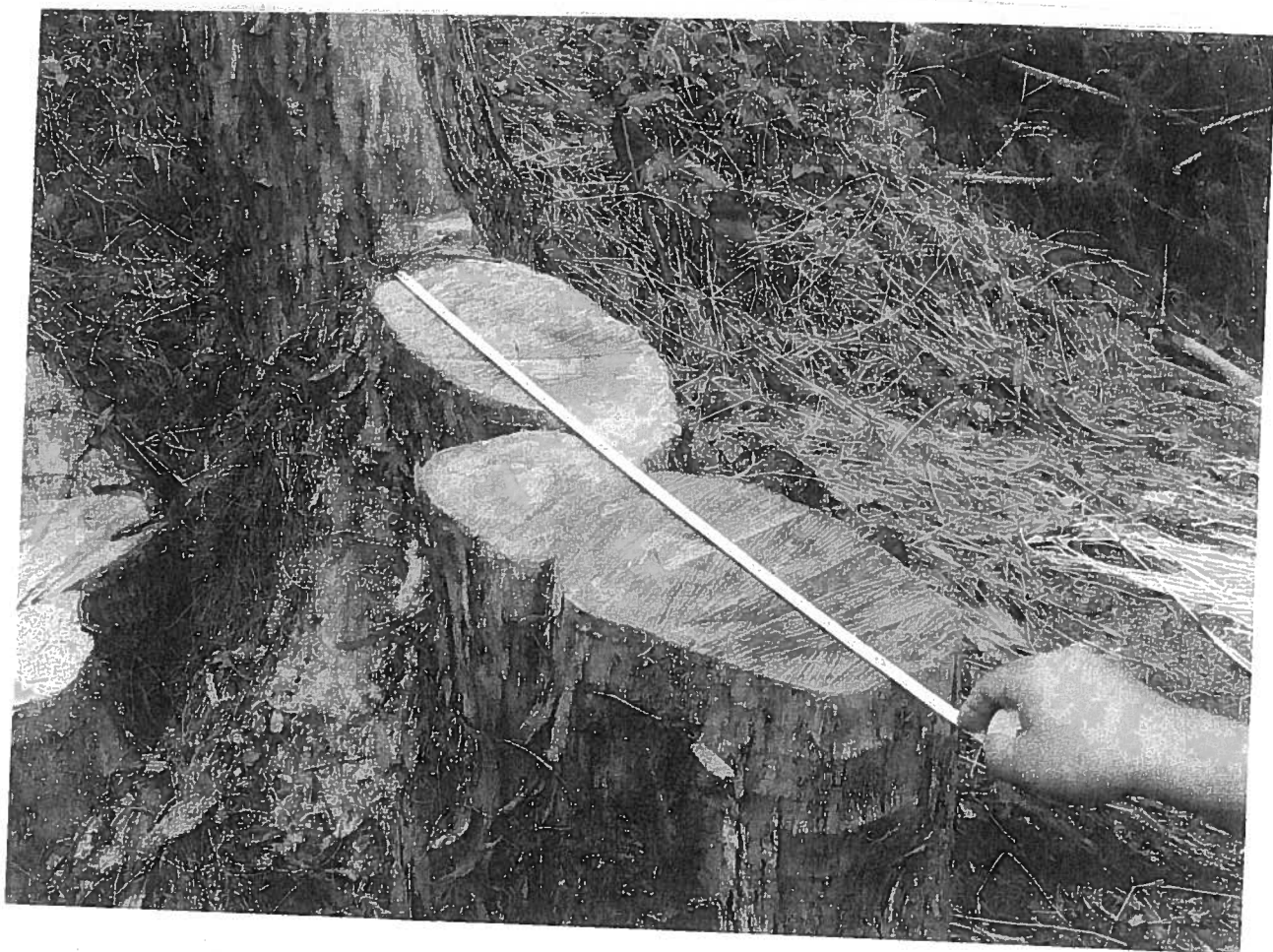




EXHIBIT 2a

EXHIBIT





2c



Debris at the bottom of the pali



Cut area to upper left, showing regrowth



Regrowth area in upper right



Cut area, seen from below

Let's Discuss

MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DONALD H. WILSON
JONATHAN J. CHUN

Federal I.D. No. 99-0317663

**BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP**
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September 15, 2008

OF COUNSEL
DAVID W. PROUDFOOT

COUNSEL
LORNA A. NISHIMITSU

ASSOCIATE
DAWN N. MURATA

Mr. Michael Caine
Office of Conservation and Coastal Lands
State of Hawaii
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

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OFFICE OF CONSERVATION
AND COASTAL LANDS
2008 SEP 17 A 11:10
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

RE: Tax Map Key No.: (4) 5-2-005:036 ?
Owner: Secret Beach Properties, LLC

Dear Mr. Caine:

Thank you for informing me, on September 10, 2008, that a complaint had been received by your office that my client was putting in steps on the above-referenced property ("Property"), and that the matter had been referred to DOCARE for investigation.

Between the time that you conducted your site inspection of the Property on or about January 28, 2008, and my telephone call to you, my client had been engaged in the work of removing fallen trees/branches and other debris that had resulted from the unauthorized tree-cutting and other activities of the owners of Lot 11-A-17 of the Pali Namahana Subdivision (Tax Key No. (4) 5-2-05-029). You had confirmed, at the conclusion of your inspection, that our client would be able to maintain the Property and remove dead, dying or hazardous trees without any type of Conservation permit, so long as there was some internal documentation kept by Secret Beach Properties as to what was being done, and this activity was what our client had commissioned through Paradise Grounds Care.

The work in which my client was engaged led them to travel in a westerly direction along the Property to reach the trees, branches, etc. that needed to be removed. To reach areas where deadfall had come to rest, the workers needed to open trails (some of which were already established but needed clearing, and some of which had to be put in place) to reach it and, in some instances, install safety fencing (comprised of t-posts and hogwire) which served both to keep workers from falling and to retain the cut branches, fallen trees, and other vegetation which had the potential of falling down the slopes to the beach below. As they continued their work, they discovered, and reported to our client, that two other owners of

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EXHIBIT 4

adjoining bluff properties had been engaging in tree-cutting and allowing cuttings/trunks to fall. When Mr. Hughes spoke with the owners of the properties for whose apparent benefit similar tree-cutting had been done, one of the owners acknowledged that he had been doing so for some time.

Because of the newly discovered cuttings, our client will have to continue to have Paradise Grounds Care crew on site to get access to the fallen trees, branches and other debris to complete the maintenance of the Property. Enclosed are a number of colored photographs to illustrate the condition of the Property before our client commenced the clean-up of the unauthorized cuttings, and the condition of certain areas after the Paradise Grounds Care workers were able to establish trails to the areas which required cleaning. You are familiar with some of what is depicted, having walked the Property in January of this year.

Some of the photographs taken after the commencement of work depict the safety fencing that was installed at the discretion of the workers, who made the determination as to where such fencing was necessary to prevent workers or any trespassers from sliding off the edge to the rocks/beach below, and where such fencing was necessary to "catch" any deadfall. These fences, which do not serve to keep anyone from entering the Property, were put in place as part of the contractor's Best Management Practices and for safety reasons. The location of these fences should serve to hold additional deadfall from reaching the beach below. It should be pointed out that the owners of the properties adjoining the Property also enter onto the Property, and this fencing, and the maintenance trails, tend to also serve the purpose of protecting them and any trespassers, as well as the maintenance crew, from potentially serious injuries resulting from a fall.

Secret Beach Properties is very concerned about its exposure to liability from:

1. Natural deadfall, which could injure persons on the beach below the Property (some of the photographs show that portions of trees have fallen to the beach);
2. Man-made deadfall, which could have the same result; and
3. Safety of the Paradise Grounds Care workers whose efforts clean up natural and man-made cuttings, and of other persons entering onto the Property, whether with, or without, Secret Beach Property's permission.

The work done by Paradise Grounds Care, including the installation of the safety fencing, is only for maintenance, and not for beautification purposes. Had our client not been
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Mr. Michael Caine
September 15, 2008
Page 3

subjected to the violation notice from OCCL, it would not have commenced any of the costly and arduous work necessary to clean the messes left by adjoining property owners. We also believe that it is obvious that our client had no reason to engage in any of the tree-cutting, as the only views that were enhanced were the views from the adjoining properties.

Please let me know, at your earliest convenience, whether you require any further information, as our client wishes to assist you in connection with the on-going investigation triggered by the first and second complaints. Thank you very much for your kind attention to the foregoing.

Very truly yours,

**BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP**



Lorna A. Nishimitsu

Enclosures

cc: Secret Beach Properties, LLC (w/o copies of enclosures)





PHOTO #3



PHOTO #4



PHOTO #6



PHOTO #7



PHOTO #8

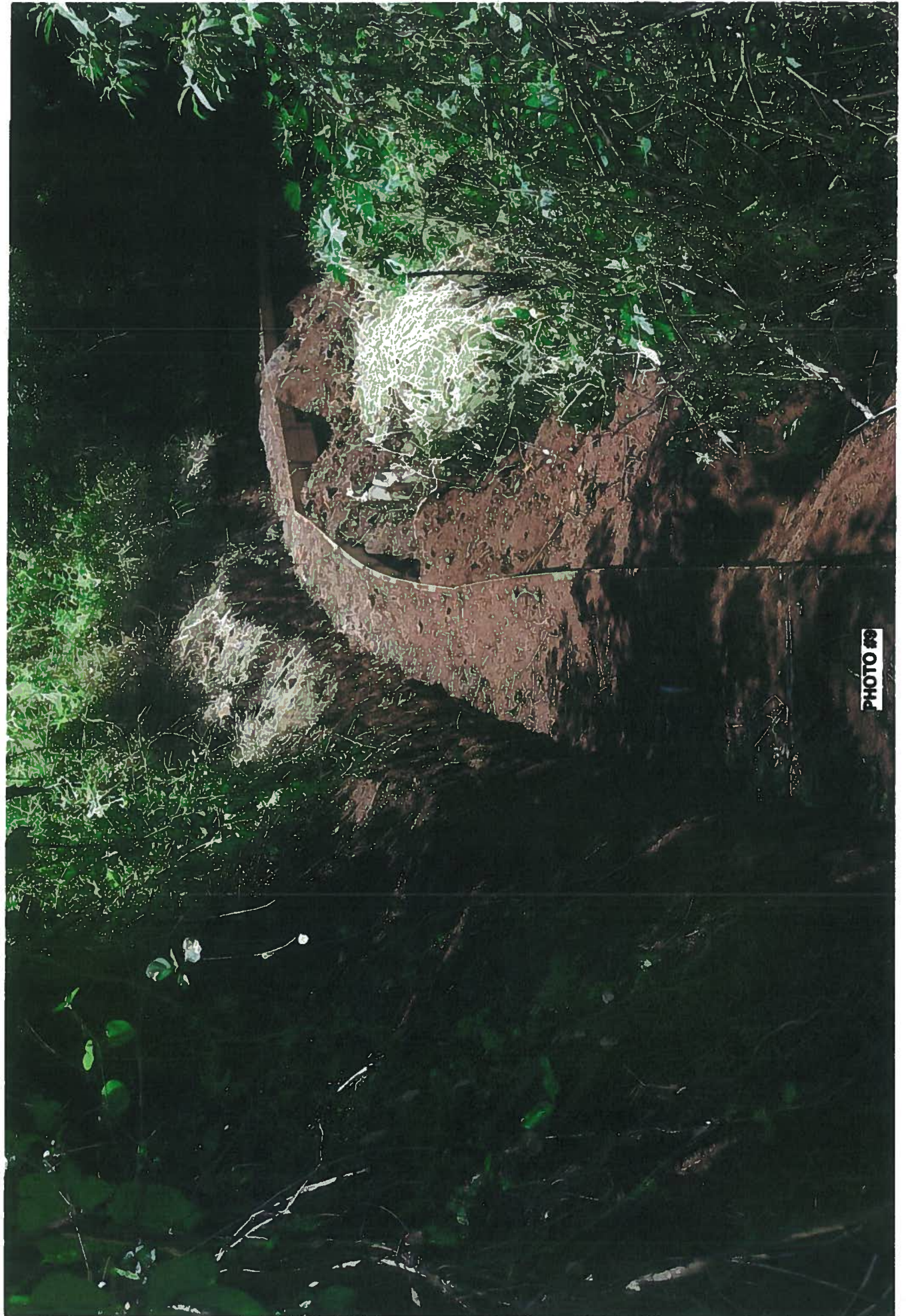
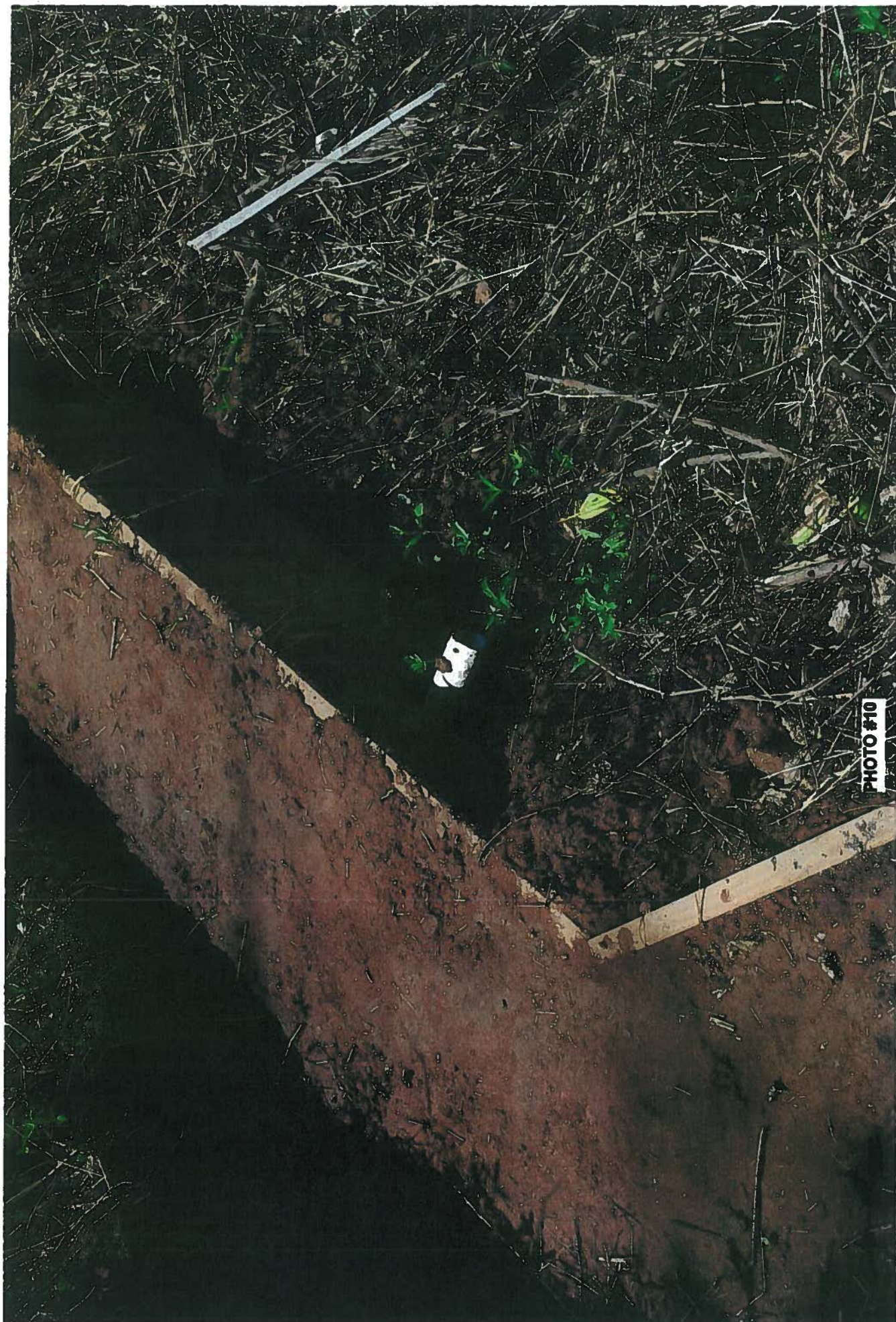


PHOTO #89







Kauapea Rd

Kilauea, Kauai | \$6,250,000 FS

- Details
- [Pics](#)
- [Map](#)
- [Email](#)
- [Save](#)

[Request Additional Info](#) Virtual tours, video, more photos, sales history, lien info... or call 1+ (800) 667-5028

Listing Price	Land Area	Living Area	Bedrooms	Baths	Days on Market
\$6,250,000	3.55 acres	N/A	0	0	345



[View all photos large](#)

- [Request More Info](#)
- [Ask a Question](#)
- [Schedule a Showing](#)
- [Make an Offer](#)

Description: Private, Pristine, Perfection - Ocean Bluff acreage Home-site and rare Secret Beach vehicular and pedestrian access.

Discretely located behind a beautiful automatic wooden gate and lava rock wall at the end of exclusive Kauapea Road, the entrance to Secret Beach Estates awaits your discovery.

Once through the gate, the paved driveway leads you over two streams on the way to the ocean bluff estate acreage. Incredible views of Mount Namahana and the Hanalei range exist everywhere. All utlities are installed so the site is ready for your vision to unfold.

This premium, level ocean bluff parcel has astounding panoramic mountain, sandy beach, and ocean views from the entire property. Bali Hai (Mount Makana) and Anini Reef are also within view of the main home-site. The back of the property faces the Kilauea lighthouse and slopes down into the beautiful Secret Valley that is loaded with exotic flowers and fruit trees.

The only private road on Kauai down to a very Secret Beach runs parallel to one side of the property providing exclusive, quick and easy vehicular or walking access to the stunning beach below. A walking trail can also be easily created from home-site through property to the beach.

What is Secret Beach? Over a mile of pristine, soft golden sand. A majestic waterfall cascading into the ocean. Natural black lava rock tidal pools. A freshwater "shower" spring. Several explorable sea caves. Swimming, surfing, boating, and a beautiful coral reef. Countless dolphins, whales, turtles, Hawaiian monk seals, and rare tropic sea birds...

This is the very best of the best...You must see and experience the place to truly understand its beauty.

Status: Active

Included: Drive, Fencing, Landscaped, Rock Walls, Security, *see Remarks

Utilities: County Water, Telephone Service, Tv Cable, Underground Electric

Road: County, Private

Property Tax	Assessed Value	Year Built	Views	Tax Key	MLS#
\$33,628	\$4,873,500	2007	Ocean, mountain	4520050350002	215256

Comparable Properties



[3471 Anini Rd](#)

EXHIBIT 6

2878 Kauapea Rd

Kilauea, Kauai | \$8,700,000 FS

- Details
- Pics
- Map
- Email
- Save

Request Additional Info

Virtual tours, video, more photos, sales history, lien info... or call 1+ (800) 667-5028

Listing Price	Land Area	Living Area	Bedrooms	Baths	Days on Market
\$8,700,000	4.02 acres	3,104 sq.ft.	4	4	246



View all photos large

- Request More Info
- Ask a Question
- Schedule a Showing
- Make an Offer

Description: Located on Kauapea Road, one of the north shore's most exclusive and sought after locations, the Villa at Lewalani (meaning the highest of the heavens) reigns majestically over 4+ acres of lush landscaping. Perched on the bluff with flawless views of sweeping coastline and Bali Hai sunsets is this 4 bedroom, 4 bath home which enjoys the perfect sense of indoor/outdoor harmony that is a signature of its owners, real estate investors and innovators, The Michele Hughes Company.

Along with the purchase of this property is a coveted beach access on a private manicured trail leading to world renowned Secret Beach

The focus of this property is to create the ultimate experience of living in the most sought after location in the Hawaiian Islands.

The zoning allows for a Guest House.

Status: Active

Included: Ceiling Fan, Chandelier, Dryer, Garbage Disposal, Dish Washer, Fire Place, Floor Tile, Car Garage, Landscaped, Microwave, Pool Equipment, Pool, Refrigerator, Range, *see Remarks, Tv Cable, Washer

Utilities: County Water, Overhead Electric, Telephone Service, Tv Cable

Car Storage: 2 Car, Garage

Car Storage Area: 550 sq.ft.

Deck / Lanai : Lanai

Deck / Lanai area: 840 sq.ft.











Road: County, Paved

Foundation: Contrete slab

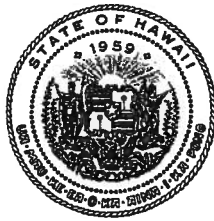
Roof: Composition

Property Tax	Assessed Value	Year Built	Views	Tax Key	MLS#
\$36,731	\$5,615,100	1996	Ocean, mountain	4520050310001	218427

Comparable Properties

 <div>4971 Hanalei P... \$8,950,000</div>	 <div>4283 Anini Vis... \$7,800,000</div>	 <div>4160 Wailapa Rd \$9,500,000</div>	 <div>57534 Kuhio Hwy \$9,000,000</div>	 <div>2445 Makenano Pl \$8,490,000</div>
 <div>0 Anini Vista Dr \$9,800,000</div>	 <div>4460 Kuhio Hwy \$7,900,000</div>	 <div>0 Kalihiwai Rd. \$7,300,000</div>	 <div>3292 Kalihiwai Rd \$8,895,000</div>	 <div>51105 Kuhio Hwy \$8,400,000</div>

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

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HONOLULU HAWAII 96809

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DOCARE - ADMIN
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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

NOTICE OF ALLEGED VIOLATION & ORDER

REF: OCCL:MC

Enforcement : KA-08-06

CERTIFIED RETURN RECEIPT
7007 0710 0003 9987 8688

JUL 30 2009

Secret Beach Properties LLC
c/o Justin Hughes
6 Rollin Hills Rd.
Belvedere Tiburon CA 94920

Mr. Hughes:

SUBJECT: ALLEGED UNAUTHORIZED WORK IN THE CONSERVATION DISTRICT
Namahana, Hanalei, Kaua'i
TMK (4) 5-2-05:36

NOTICE IS HEREBY GIVEN that you are in violation of Hawai'i Administrative Rules (HAR) Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District, enacted pursuant to Chapter 183C, Hawaii Revised Statutes (HRS).

The Department of Land and Natural Resources (DLNR) has determined that:


1. The location of the construction, Tax Map Key: (4) 5-2-05:36, is in the Conservation District and is classified as *Limited* Subzone;
2. In November 2007 the Office of Conservation and Coastal Lands (OCCL) investigated complaints regarding unauthorized tree cutting and green waste dumping on the subject parcel;
3. OCCL concluded that a neighboring property owner had conducted the cutting and dumping; the landowner agreed to clear the green waste off their land; OCCL did not pursue the enforcement action pending the cleanup;
4. In September 2008 the landowner's representative notified OCCL that they would be "opening up" an existing trail to conduct the maintenance;
5. In July 2009 OCCL requested that officers from the Division of Conservation and Resource Enforcement (DOCARE) conduct a site visit to determine if the maintenance and clean up had been completed;

EXHIBIT 7

6. OCCL was then notified that the landowners instead have removed healthy trees, cut and graded a new trail along the pali, and installed steps and fencing along the trail; and this work appears to be ongoing;
7. This work requires a Conservation District Use Permit (CDUP) from either the Chair or the Board of Land and Natural Resources pursuant to Hawai'i Administrative Rules (HAR) §13-5 *Identified Land Uses in the Limited Subzone, L-4 LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS*;
8. This work was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

This letter serves as a formal Notice of Alleged Violation & Order to stop any further land use within the Conservation District. The Department intends to bring this matter to the attention of the Board of Land and Natural Resources (BLNR) as an alleged violation of Hawai'i Revised Statute Chapter 183C-7 and rules promulgated pursuant to that chapter. If you continue to engage in land use in the Conservation District after receipt of this notice, the Department may ask the BLNR to assess a fine of up to \$15,000 per day in addition to other penalties and remedies that may already or otherwise be applicable.

Please contact Michael Cain at (808) 587-0048 to discuss this matter.

By 
LAURA H. THIELEN, Chair
Board of Land and Natural Resources

cc: DOCARE, County Planning Department